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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,199	06/13/2001	Cornelis Theodorus Verrips	F7544(V)	6098
201 7590 09/21/2007 UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			EXAMINER CHAWLA, JYOTI	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 09/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/880,199	Applicant(s) VERRIPS, CORNELIS THEODORUS	
	Examiner Jyoti Chawla	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6,12-14,19,21-25 and 27 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6,12-14,19,21-25 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/27/07 & 7/20/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 6, 12-14, 19, 21-25 and 27 remain pending. Independent claim 14, and those dependent therefrom, claims 12-13, 19 and 22 that were indicated as allowed, (Notice of Allowance dated September 13, 2004). Upon reconsideration of the subject matter as amended and claimed instantly, the allowance of claims 12-14, 19 and 22 has been withdrawn. The new rejection on the merits of these claims was presented in the previous office action dated February 23, 2007. No amendments have been made to the claims. Claims 6, 12-14, 19, 21-25 and 27 are rejected in the present office action.

Claim Rejections - 35 USC § 112

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 24-25, 27, 6, 21 and 23 remain rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 recites "no substantial fermentation of the food product by said Lactobacillus bacteria will take place by said non-viable bacteria". As recited it is unclear whether lactobacillus bacteria stated above in claim 24 are viable or non-viable. Clarification and/ or correction is required.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(i) Claims 6, 24-25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Meister et al. (US PAT 6,010,725). Meister et al. is herein incorporated as cited in the previous office actions dated, February 23, 2007, February 8, 2006 and page 6 of the February 25, 2004.

(ii) Claims 6, 12-14, 19, 21-22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Klaver et al. (US 5409718).

The references and rejection are incorporated herein and as cited in the office action mailed February 23, 2007.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(A) Claims 6 and 21, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Froseth et al. (US PAT 6,592,915) in view of Meister et al. (US PAT 6,010,725).

The references and rejection are incorporated herein and as cited in the office action mailed February 23, 2007 and pages 4-5 of February 8, 2006 Office action.

(B) Claims 25 and 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klaver (US 5409718) in view of Dairy Science and Technology Handbook.

The references and rejection are incorporated herein and as cited in the office action mailed February 23, 2007.

(C) Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Froseth et al. (US PAT 6,592,915) in view of Klaver (US 5409718), taken as cited above. Note that Froseth et al. qualifies as prior art under 35 U.S.C. 102(e) and thus 35 U.S.C. 103(a).

The references and rejection are incorporated herein and as cited in the office action mailed February 23, 2007.

(D) Rejection of claims 6, 12-14, 19, 21-22, 24-25 and 27 under 35 U.S.C. 103(a) as being unpatentable over Yanagisawa et al (JP Application number 2000160263 and Patent number 2001333723A) in view of review article by Ouwehand et al (Int. Dairy

Journal 8 (1998) 749-758) has been withdrawn in light of the later publication date of the Japanese patent document.

Response to Arguments

Applicant's arguments with respect to claims 6, 12-14, 19, 21-25 and 27 submitted June 25, 2007 have been considered but are not deemed persuasive and the rejections are maintained for reasons of record.

1) On pages 2 and 3 of the remarks, applicant argues that Meister reference does not teach "adding probiotic Lactobacillus bacteria into the food product, said bacteria rendered non-viable before or after addition to the food product". In response to applicant's argument, it is noted that in the present instance Meister et al. discloses that a culture of microorganisms is mixed with a liquid preparation of a food composition, such as milk, or one from meat, fruits or vegetables (col. 4), which is subsequently heated and spray-dried to form a dried food composition containing amounts of both viable and non-viable bacteria. The reference teaches that during spray drying the microbial composition is exposed to temperatures between 200-400⁰C (Abstract). The reference also teaches that it was known in the art that temperature range of 180-300⁰C for spray drying is capable of killing all the live organisms (Column 1, lines 19-24). Also the reference clarifies that for spray drying the air inlet temperature of 200-300⁰C or above is utilized however the droplet temperature remains from about 40-70⁰C. Meister et al do teach that the spray drying treatment is capable of destroying the microbial population, however, it can be modified such that some of the microbes remain alive, e.g., by rapid drying etc (Column 2, lines 1-50). As taught, since the inside temperature of the sprayed droplet taught by Meister is about the same as the temperature recited by the applicant in claim 25 for pasteurization, therefore, the effect of the two heat treatments will also be about the same. Thus, Meister et al do teach a heat treatment (i.e., spray drying) which is capable of destroying the microbial population by exposing

the microbial culture to an internal temperature about 40-70°C for a certain time in order to dry the bacterial composition. Since dehydration or drying requires a longer exposure to heat than pasteurization at the same temperature, it would be inherent the effect of spray drying at the same temperature as recited in claim 25, will result in rendering the bacterial culture non-viable to about the same extent as would have been achieved by pasteurization at 72°C for 30 seconds as recited.

II) Applicant argues that Klaver does not teach the invention as recited in claim 14, because Klaver does not pasteurize the yogurt. In response the applicant is referred to the claim as recited states "A method to produce a food product comprising probiotic Lactobacillus bacteria which have been rendered non-viable... followed by inactivation of the viable probiotic Lactobacillus before substantial fermentation of the food product can take place, and wherein no substantial fermentation of the food product by said Lactobacillus bacteria will take place, the method including *a pasteurization step for preparation or preservation of the food product.*" Klaver reference teaches of making yogurt where the non-viable lactobacillus bacteria are added to the non-incubated *pasteurized* milk (Column 3, lines 15-60, specially lines 53-55). Thus the reference teaches of pasteurization as a step for preparation of yogurt as instantly claimed.

Thus applicant's arguments submitted June 25, 2007 have been fully considered but have not been found persuasive and claims 6, 12-14, 19, 21-25 and 27 remain rejected for reasons of record.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

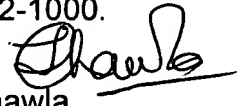
Art Unit: 1761


shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jyoti Chawla
Examiner
Art Unit 1761


KEITH HENDRICKS
PRIMARY EXAMINER